

REMARKS

Applicant's attorney wishes to thank the Examiner for the careful consideration given to the present application. Currently, claims 12-17 are added and claims 1-11 have been canceled. Support for new claims may be found in the specification as filed. Thus, no new matter has been added. Accordingly, claims 12-17 are pending. Applicant addresses each of the rejections set forth in the Office Action in the order presented therein.

Specification

The abstract of the disclosure is objected to because it exceeds 150 words. Applicant herewith submits amendments to the abstract to conform with MPEP § 608.01(b).

35 U.S.C. § 112, second paragraph

Claims 1 to 5 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for the use of the terms "high histidine content", "said active ingredients" and "12,000 mg – 20,000 mg weight percent". Applicant has canceled claims 1-5, thus rendering this rejection moot.

In addition, Applicant recites that the histidine content of the histidine-containing composition is about 12% to about 20%. Applicant submits that support for such amendments may be found in the disclosure as originally filed, for example, in paragraph [0029] and Example 1 of the present specification. Thus, no new matter has been added. Applicant respectfully submits that new claims 12-17 correspond to the original claims 1-5. Applicant submits that the claims are definite and requests withdrawal of the rejection of claims 1 to 5 under 35 U.S.C. § 112, second paragraph.

35 U.S.C. §102

Claims 1, 2 and 5 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Nakajima S et al., J Jpn. Soc. Nutr. Food Sci. 53: 207-214, 2000 (hereinafter referred to as "Nakajima"). The Examiner alleges that Nakajima teaches about a material for processed food for weight reduction diets, comprising protein with high histidine content, extracted from fish, to maintain body protein and reduce only the body fat of humans. Applicant respectfully disagrees.

While Applicant preserves the right to further establish that Nakajima fails to render the present claims anticipated or obvious, solely to expedite the allowance of the present application, Applicant has canceled claims 1-11 and added new claims 12-17. Nakajima fails to disclose an effective amount of histidine that has an effect on maintaining body protein and concurrently reducing the body fat of animals. Nakajima only teaches that histamine has a suppressive effect on food intake by activating histaminergic neurons. At best, Nakajima discloses the result of the correlation between the intakes energy and histidine. More specifically, Nakajima conducted a survey among 64 students about their food intake for three days and concluded that histidine has a suppression effect on food intake by activating histaminergic neurons.

Nakajima is silent to the effect of histidine on reducing body fat of the animals. The mechanism of suppression of food intake is different from the mechanism of reducing the body fat of the animals and Applicant is first to disclose a histidine-containing composition for weight reduction diets for maintaining the body protein and concurrently reducing the body fat in an animal. Nakajima does not disclose each and every element of the newly claimed invention either explicitly or inherently and thus it does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the Examiner's rejection is respectfully requested.

35 U.S.C. §103

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima in view of Ogura T et al., S63-101370 (hereinafter referred to as "Ogura"). The Examiner alleges that it would have been obvious to include the teaching of Ogura into Nakajima. Applicant respectfully disagrees.

As mentioned above, Nakajima does not disclose the effect of histidine on reducing body fat of the animals.

Ogura only discloses a method of obtaining histidine using an ultrafiltration membrane. Ogura fails to disclose a method of obtaining a composition comprising histidine as described in the newly added Claim 17 of the present invention. The method of claim 17 includes the steps of concentrating the extract using a reverse osmosis membrane, and

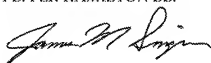
desalinating using electrodialysis. Ogura is silent to the use of reverse osmosis membrane or the use of electrodialysis. In fact, Ogura expressly teaches away from the step of desalinating using electrodialysis. More specifically, in the section of “Problems to be Solved”, Ogura discloses that “means of electrodialysis are deficient in their impracticality because the purification cost is too high” as described in the last paragraph. The presently claimed invention expressly requires using reverse osmosis membrane and electrodialysis. As such, the combined teachings of Nakajima and Ogura do not teach or suggest the limitations of claims 12-17. Accordingly, reconsideration and withdrawal of the Examiner’s rejection is respectfully requested.

CONCLUSION

Applicant believes that the claims as presented are in condition for allowance, and notice to such effect is respectfully requested. Should the Examiner have any questions or comments, or need any additional information from Applicant's attorney, the Examiner is urged to contact the undersigned.

Applicant has timely filed this response. In the event that an additional fee is required for this response, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 50-0436.

Respectfully submitted,
PEPPER HAMILTON LLP



By: _____
James M. Singer
Reg. No. 45,111

PEPPER HAMILTON LLP
One Mellon Center, 50th Floor
500 Grant Street
Pittsburgh, PA 15219
Phone: (412) 454-5853
Date: April 27, 2010